

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Unlicensed Loan
Modification Activity of Todd Jacobson and
LMS and Associates

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson on September 7, 2010, at the Office of Administrative Hearings in St. Paul, Minnesota. Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Todd Jacobson, owner of LMS and Associates, appeared without counsel on behalf of LMS and Associates and himself.

Prior to the start of the hearing on September 7, 2010, Mr. Jacobson and counsel for the Department notified the Administrative Law Judge that they had reached a stipulation under which Mr. Jacobson and LMS agreed that they would not admit the allegations set forth in the Statement of Charges but would not contest them, and reserved the right to submit argument to the Commissioner regarding the appropriate sanction to be imposed against them, including the right to argue that Mr. Jacobson should not be individually sanctioned. As a result, the September 7, 2010, hearing was cancelled and the OAH record was deemed closed as of that date. The terms of the agreement reached between the Department and Respondents are reflected in this Report.

STATEMENT OF THE ISSUES

Did Respondents Todd Jacobson and LMS and Associates engage in real estate mortgage origination activity without a license; file a false application for a mortgage originator's license; engage in unlicensed real estate broker activity; engage in deceptive or dishonest acts by forging signatures and altering documents; make false, deceptive, or misleading statements in connection with loan modification activity; or fail to act in customers' best interest and in the utmost good faith toward borrowers, and thereby violate Minn. Stat. §§ 58.04, subds. 1 and 3; 58.12, subd. 1(b); 58.13, subd. 1(a); 58.161, subd. 1; or 82.41, subd. 1? If so, what, if any, disciplinary sanctions should be imposed?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondents Todd Jacobson and LMS and Associates are not licensed in any capacity by the Department.

2. On March 16, 2010, the Department served a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges in this matter on Respondents at their address in St. Louis Park, Minnesota. At that time, the caption of the case referred only to unlicensed loan modification activity of LMS and Associates.¹

3. In accordance with the Notice of Hearing, a prehearing conference was held in this matter on May 5, 2010. Todd Jacobson, Clinton Rooney, and counsel for the Department appeared at the prehearing conference, and a schedule was set under which the hearing would be held on August 3, 2010.

4. On May 12, 2010, the Department filed an Amended Statement of Charges that also amended the caption of the case to allege unlicensed loan modification activity by Todd Jacobson as well as LMS and Associates.

5. By agreement of the parties, the hearing date was subsequently changed to September 7, 2010.

6. Prior to the beginning of the hearing on September 7, 2010, the Department and Respondents notified the Administrative Law Judge that they had reached a stipulation. Under the stipulation, Respondents do not admit the allegations contained in the Amended Statement of Charges but will not contest those allegations. The parties also stipulated that Respondents reserve the right to submit argument to the Commissioner regarding the appropriate sanction to be imposed against them, including the right to argue that Mr. Jacobson should not be individually sanctioned. As a result, the September 7, 2010, hearing was cancelled.

7. Based on the stipulation entered into between the Department and the Respondents, the allegations contained in the Amended Statement of Charges with respect to Respondents are not admitted but are not contested. Those allegations are hereby incorporated into these Findings of Fact, with the understanding that Respondents reserves their right to present argument to the Commissioner regarding what, if any, sanctions should be imposed against them and whether Mr. Jacobson should be individually sanctioned.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

¹ See Affidavit of Service by U.S. Mail attached to amended Notice of and Order for Hearing dated March 16, 2010.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 60K.43.
2. The Notice of Hearing and Amended Statement of Charges was proper, the Department has complied with all relevant procedural legal requirements, and this matter is properly before the Commissioner and the Administrative Law Judge.
3. Respondents have entered into a stipulation with the Department under which they do not admit but will not contest the allegations set forth in the Amended Statement of Charges. Accordingly, the allegations contained in the Amended Statement of Charges are taken as true.
4. Based upon the facts set forth in the Amended Statement of Charges, Respondents engaged in loan modification activity without a mortgage original license, in violation of Minn. Stat. § 58.04, subds. 1 and 3 (2008).
5. Based upon the facts set forth in the Amended Statement of Charges, Respondents filed a false application for a mortgage originator's license, in violation of Minn. Stat. §§ 58.04, subds. 1 and 3, and 58.12, subd. 1(b)(2)(ii) (2008).
6. Based upon the facts set forth in the Amended Statement of Charges, Respondents represented that they were authorized to conduct a short sale and thereby engaged in real estate broker activity without a license, in violation of Minn. Stat. § 82.41 (2008).
7. Based upon the facts set forth in the Amended Statement of Charges, Respondents forged signatures and altered documents and thereby engaged in deceptive or dishonest acts or practices, in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2008).
8. Based upon the facts set forth in the Amended Statement of Charges, Respondents made false, deceptive or misleading statements and representations in connection with loan modification activity, in violation of Minn. Stat. §§ 58.13, subds. 1(a)(9) and 325N.04(1) (2008).
9. Based upon the facts set forth in the Amended Statement of Charges, Respondents failed to act in customers' best interests and in the utmost good faith towards borrowers, in violation of Minn. Stat. § 58.161, subd. 1 (2008).
10. The imposition of appropriate disciplinary action against Respondents is in the public interest.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner of Commerce take appropriate disciplinary action against Respondents.

Dated: September 10, 2010

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Jr., Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, tel. 651-296-4026, to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.